

Memorandum of Understanding
among
The Regents of the University of California,
University of Toledo,
and
The Ohio State University

This Memorandum of Understanding (hereinafter “MOU”) with the effective date of November 30, 2018, is by and among The Regents of University of California, on behalf of its San Francisco campus (“UCSF”), acting through its Office of Sponsored Research, 3333 California Street, Suite 315, San Francisco, California 94143; the University of Toledo (“UT”), an instrumentality of the State of Ohio, located at 2801 West Bancroft Street, Toledo, Ohio 43606; and The Ohio State University, Office of Sponsored Programs, 1960 Kenny Road, Columbus, Ohio 43210 (“OSU”); and collectively referred to as “Parties”.

WHEREAS, the Parties each have received awards from the National Science Foundation for the creation of the Center for Disruptive Musculoskeletal Innovation (“CDMI”) in its efforts to develop concepts, methods, and tools for use in our area of science; to stimulate industrial innovation; and to provide Parties with strengthened educational and research capabilities in these fields.

WHEREAS, the activities of CDMI are funded by (i) National Science Foundation (“NSF”), (ii) industry members who have executed the CDMI Industry Membership Agreement (“Center Members”), and (iii) other funds that may be received from time to time; and

WHEREAS all Parties are now University Research Sites and agree that this document will supersede the previous fully executed Memorandum of Understandings, with an effective date of April 30, 2014 (the “UCSF and UT MOU Agreement”, hereby attached as Exhibit A) and the second fully executed Memorandum of Understanding, with an effective date of May 1, 2017 (the “UCSF, UT, and OSU MOU Agreement”, hereby attached as Exhibit B).

NOW THEREFORE, the Parties agree as follows:

1. Center Funding.
 - a. Each Party will receive its own funds directly from NSF, will be responsible for recruiting its own Center Members, and will retain membership fees collected from its Center Members.

- b. When NSF decides to make a single payment to one Party for distribution between Parties, all membership fees will be deposited into a single account for distribution to Parties for core research selected by the Industrial Advisory Board (hereinafter referred to as IAB).
2. Cross-Party Funds Transfer. The transfer of funds between Parties for core projects selected by the IAB will be made without the assessment of the indirect costs normally associated with the issuance of a subcontract. The transfer of funds between Parties for CDMI administrative matters will be decided with unanimous agreement of the Directors and will be made without the assessment of the indirect costs normally associated with the issuance of a subcontract.
3. Industry Membership Agreement.
 - a. The Parties agree that “Center” as referenced in the CDMI Industry Membership Agreement from UCSF, UT, and OSU collectively are considered as to be CDMI and the CDMI Industry Membership Agreements are hereinafter collectively referred to as “Membership Agreement” and attached to this MOU as Exhibit C. Therefore, although each Membership Agreement is signed between an industry member/collaborator and one of the Parties, under this MOU, the Parties consider such Membership Agreement as if it were entered into with CDMI, that is, the multisite cooperative research center consisting of UCSF, UT, OSU and other university research sites that may later join the Center (“University Affiliates”).
 - b. UCSF, UT, and OSU agree to function as a NSF I/UCRC partnership where all Center Members are guaranteed uniform rights and responsibilities to intellectual property developed in the process of Center-funded research regardless of the Center site where Center Member joined.
4. Ownership and Administration of Intellectual Property.
 - a. All intellectual property developed in the course of the CDMI (“IP”) and invented by inventors solely at one Party will be managed and title held by that Party.
 - b. Each Party shall be responsible for the identification and evaluation of its sole IP and for informing Center Members regarding IP as outlined in the Membership Agreement. If Center Members and the inventing Party agree that patent protection should be sought and if Center Members are interested in securing such protection, the process will follow as outlined in the Membership Agreement. If Center Members are not interested in procuring protection for the IP, the inventing Party may determine on their own whether protection will be sought, and that Party may dispose of the IP as it sees fit.

- c. All IP invented jointly by personnel of Parties will belong jointly to each Party and the technology transfer offices at Parties shall determine who shall administer the IP. After identifying the Party that will administer the joint IP, Parties shall negotiate in good faith an inter-party intellectual property agreement, under which one of the Parties will manage the IP on behalf of the joint owners. The managing Party will be responsible for the timely notification of Center Members that joint IP has arisen, and for protecting, marketing, and licensing that joint IP. Each Party will be responsible for internal distribution of its share of any license revenue according to its respective policies. The Party managing the joint IP shall keep the other Party advised as to the activities in administering the IP including any progress on commercialization, patent prosecution, or copyright protection. All such information received by either Party shall be deemed confidential.
- d. Parties shall jointly review any joint IP, evaluate its commercial potential and inform Center Members regarding the joint IP as outlined in the Membership Agreement. If Center Members and Parties agree that patent protection should be sought and if Center Members are interested in securing such protection, the process will follow that outlined in the Membership Agreement. If Center Members are not interested in procuring protection for the IP, Parties will manage the joint IP according to the terms of the inter-institutional agreement.

5. Period of Performance. The period of performance of this Agreement will be concurrent with the CDMI contract with NSF. Either Party may terminate the relationship established by this MOU upon three (3) months' written notice to the other Party.

IN WITNESS WHEREOF, Parties hereto have caused this MOU to be duly executed by their duly authorized officers as of the day and year set forth next to each signature.

The Regents of the University of California

Signature:  52A772F461AE4C6...

Name: Rachel Sievert

Title: Assistant Director

Date: 12/4/2018

The University of Toledo

Signature:  92FCE80762C54A7...

Name: Frank J. Calzonetti, Ph.D.

Title: Vice President of Research

Date: 12/4/2018

The Ohio State University

Signature: 

Name: Amy B. Dudley

Title: Director, Engineering Sponsored Program Services/

Office of Sponsored Programs

Date: 12/3/18

EXHIBIT A
Memorandum of Understanding
between
The Regent of the University of California and
University of Toledo

Memorandum of Understanding
among
The Regents of the University of California,
The University of Toledo
and
Northeastern University

This Memorandum of Understanding (hereinafter "MOU") with the effective date of May 1, 2017, is by and among The Regents of University of California, on behalf of its San Francisco campus ("UCSF"), acting through its Office of Innovation, Technology & Alliances, 3333 California Street, Suite S-11, San Francisco, California 94143; The University of Toledo ("UT"), an instrumentality of the State of Ohio, located at 2801 West Bancroft Street, Toledo, Ohio 43606; and Northeastern University, a non-profit institution of higher education, organized under the laws of the Commonwealth of Massachusetts, located at 60 Huntington Avenue, Boston, Massachusetts 02115 ("NU"); and collectively referred to as "Parties".

WHEREAS, UCSF and UT (collectively referred to as "Institutions") each have received awards from the National Science Foundation for the creation of the Center for Disruptive Musculoskeletal Innovation ("CDMI");

WHEREAS, the activities of CDMI are funded by (i) National Science Foundation ("NSF"), (ii) industry members who have executed the CDMI Industry Membership Agreement ("Center Members"), and (iii) other funds that may be received from time to time;

WHEREAS, Institutions have executed a Memorandum of Understanding, with an effective date of April 30, 2014 (the "MOU Agreement", hereby attached as Exhibit A), which outlines the understanding of Institutions under CDMI; and

WHEREAS, Institutions now desire to have NU join CDMI as a University Affiliate (as defined under the MOU Agreement).


NOW THEREFORE, the Parties agree as follows:

1. Defined terms in this MOU have the meaning set forth in the MOU Agreement, unless specifically changed by the provisions hereof.

2. NU is joining CDMI as a University Affiliate, and as such NU shall have the right to recruit Center Members; the intention is that NU will transition from University Affiliate to University Research Site after completing the grant submission to the NSF and approval. Industry partners recruited by NU shall execute the CDMI Industry Membership Agreement (hereby attached as Exhibit B). The Parties to the CDMI Industry Membership Agreements signed before NU joins CDMI as a University Research Site will be UT, on the one hand, and the industry member recruited by NU, on the other. The Parties agree that, such CDMI Industry Membership Agreements with industry members recruited by NU shall be considered as if they were entered into with CDMI. Once NU joins CDMI as a University Research Site, it will execute Industry Membership Agreements on behalf of CDMI. If NU does not transition from University Affiliate to a University Research Site, industry members recruited by NU shall no longer remain as Center Members.
3. In order for NU to maintain its eligibility as a University Affiliate, during each funding cycle NU must have in good standing at least one industry member who has signed the CDMI Industry Membership Agreement. Further, at least one such industry member must have been signed on by NU by September 1st, 2017.
4. NU shall be entitled to retain membership fees received by CDMI from Center Members recruited by NU. Any such membership fees received by Institutions on behalf of NU will be transferred to NU without the assessment of any indirect costs normally associated with the issuance of a subcontract. NU shall be entitled to apply a 10% indirect cost rate to expenditure of any such membership fees. In the funding year that NU applies for full CDMI University Membership, the membership fees received by CDMI that year for CDMI Industry Membership Agreements from NU shall be credited towards the minimum amount of one hundred and fifty thousand dollars (\$150,000) required for NU to become a full CDMI University Member no later than by 2018, or the minimum of two hundred thousand dollars (\$200,000) that will be required by NSF of each University Member under Phase II of the National Science Foundation award received by CDMI by October 2018.
5. As a University Affiliate, NU shall be subject to the obligations under the MOU Agreement described for Institutions under Paragraphs 2 (Cross Funding of Research), 3a and 3b (Industry Member Agreement) and 4 (Ownership and Administration of Intellectual Property).
6. Period of Performance. The period of performance of this Agreement will be concurrent with the CDMI contract with NSF. Either Party may terminate the relationship established by this MOU upon three (3) months' written notice to the other Party.

IN WITNESS WHEREOF, Parties hereto have caused this MOU to be duly executed by their duly authorized officers as of the day and year set forth next to each signature.

The Regents of the University of California

Signature: 

Name: Sunita Rajdev

Title: Associate Director, Technology Management
UCSF Office of Innovation, Technology & Alliances

Date: 6-22-17

The University of Toledo

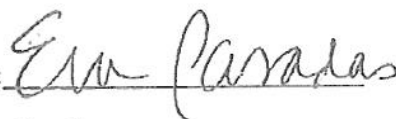
Signature: 

Name: Frank J. Calzonetti, Ph.D.

Title: Vice President of Research

Date: 6-26-17

Northeastern University

Signature: 

Name: Eva Pasadas

Title: Director, Grants & Contracts, Office of Research Administration

Date: 6/22/17

Approved as to legal form

 6-22-2017

Rita A. Hao

Date

Senior Counsel

Office of the General Counsel

Exhibit A

Memorandum of Understanding
between
The Regents of the University of California
and
University of Toledo

This Memorandum of Understanding (hereinafter "MOU") with the effective date of April 30, 2014, is by and between The Regents of University of California, on behalf of its San Francisco campus ("UCSF"), acting through its Office of Innovation, Technology & Alliances, 3333 California Street, Suite-S11, San Francisco, California 94143 and the University of Toledo ("UT"), an instrumentality of the State of Ohio, located at 2801 West Bancroft Street, Toledo, Ohio 43606, and collectively referred to as "Institutions".

WHEREAS, the Parties each have received awards from the National Science Foundation for the purpose of starting the Center for Disruptive Musculoskeletal Innovation ("CDMI") in its efforts to create concepts, methods, and tools for use in our area of science; to stimulate industrial innovation; and to provide Institutions with strengthened educational and research capabilities in these fields.

WHEREAS, the activities of CDMI are funded by (i) National Science Foundation ("NSF"), (ii) industry members who have executed the CDMI Industry Membership Agreement ("Center Members"), and (iii) other funds that may be received from time to time.

NOW THEREFORE, the Institutions agree as follows:

1. Center Funding.
 - a. During the initial period of this joint center, each Institution will receive its own funds directly from NSF, will be responsible for recruiting its own Center Members, and will retain membership fees collected from its Center Members.
 - b. When NSF decides to make a single payment to one Institution for distribution between Institutions, all membership fees will be deposited into a single account for distribution to Institutions for core research selected by the Industrial Advisory Board (hereinafter referred to as IAB)
2. Cross-Funding of Research. The transfer of funds between Institutions for core projects selected by the IAB will be made without the assessment of the indirect costs normally associated with the

issuance of a subcontract.

3. Industry Membership Agreement.

- a. The Institutions agree that "Center" as referenced in the CDMI Industry Membership Agreement from both UCSF and the CDMI Industry Membership Agreement from UT, collectively is considered as to be CDMI and both CDMI Industry Membership Agreements are hereinafter collectively referred to as "Membership Agreement". Therefore, although each Membership Agreement is signed between an industry member/collaborator and one of the Institutions, under this MOU, the Institutions consider such Membership Agreement as if it were entered into with CDMI, that is, the multisite cooperative research center consisting of UCSF, UT and other university research sites that may later join the Center ("University Affiliates").
- b. UCSF and UT agree to function as a NSF I/UCRC partnership where all Center Members are guaranteed uniform rights and responsibilities to intellectual property developed in the process of Center-funded research regardless of the Center site where Center Member joined.

4. Ownership and Administration of Intellectual Property.

- a. All intellectual property ("IP") invented by inventors solely at one Institution will be managed and title held by that Institution.
- b. Each Institution shall be responsible for the identification and evaluation of its sole IP and for informing Center Members regarding IP as outlined in the Membership Agreement. If Center Members and the inventing Institution agree that patent protection should be sought and if Center Members are interested in securing such protection, the process will follow as outlined in the Membership Agreement. If Center Members are not interested in procuring protection for inventions, the inventing Institutions may determine on their own whether protection will be sought, and that Institution may dispose of the IP as it sees fit.
- c. All IP invented jointly by personnel of Institutions will belong jointly to each Institution and the technology transfer offices at Institutions shall determine who shall administer the IP. After identifying the Institution that will administer the joint IP, Institutions shall negotiate in good faith an inter-institutional intellectual property agreement, under which one of the Institutions will manage the invention on behalf of the joint owners. The managing Institution will be responsible for the timely notification of Center Members that joint intellectual property has arisen, and for protecting, marketing, and licensing that joint intellectual property. Each Institution will be responsible for internal distribution of its share of any license revenue

according to its respective policies. The Institution managing the joint IP shall keep the other Institution advised as to the activities in administering the IP including any progress on commercialization, patent prosecution, or copyright protection. All such information received by either Institution shall be deemed confidential.

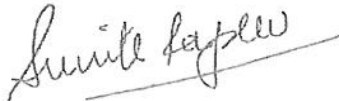
- d. Institutions shall jointly review any joint IP, evaluate its commercial potential and inform Center Members regarding the joint IP as outlined in the Membership Agreement. If Center Members and Institutions agree that patent protection should be sought and if Center Members are interested in securing such protection, the process will follow that outlined in the Membership Agreement. If Center Members are not interested in procuring protection for inventions, Institutions will manage the joint IP according to the terms of the inter-institutional agreement.

5. **Period of Performance.** The period of performance of this Agreement will be concurrent with the CDMI contract with NSF. Either Institution may terminate the relationship established by this MOU upon three (3) months' written notice to the other Institution.

IN WITNESS WHEREOF, Institutions hereto have caused this MOU to be duly executed by their duly authorized officers as of the day and year set forth next to each signature.

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

Signature:



Name: Sunita Rajdev

Title: Associate Director, Technology Management
UCSF Office of Innovation, Technology & Alliances

Date: 4/30/14

UNIVERSITY OF ILLINOIS

Signature:



Name:

William S. Messer, Jr., Ph.D.
Vice President for Research

Title:

Date:

7/22/14

EXHIBIT B
CDMI Industry Membership Agreement

Center for Disruptive Musculoskeletal Innovation
An NSF Industry/University Cooperative Research Center

Industry Membership Agreement
(Non-Negotiable Standard Agreement)

University Reference ID: [ENTER UNIQUE CONTRACT NUMBER HERE]

This Industry Membership Agreement ("Agreement") is effective as of the date of the last signature hereto ("Effective Date") and is entered into by and [The Regents of the University of California, on behalf of its San Francisco campus] ("UCSF") or [The University of Toledo] ("UT") and [ENTER COMPANY NAME HERE], a [ENTER ENTITY DESCRIPTION HERE] organized under the laws of the State of [ENTER STATE OF INCORPORATION HERE] having a principal place of business located at [ENTER COMPANY ADDRESS HERE] ("Company").

WHEREAS, the parties to this Agreement intend to join together in a cooperative effort to support an Industry/University Cooperative Research Center described as the Center for Disruptive Musculoskeletal Innovations (hereinafter "Center") involving the University of California, San Francisco ("UCSF"); University of Toledo ("UT"); and other university research sites awarded by the National Science Foundation that may join this Center (hereinafter collectively referred to "University Research Sites"); and

WHEREAS, the Center is funded by the National Science Foundation ("NSF"); and

WHEREAS, the purpose of Center is to maintain a mechanism whereby a university environment can be used to perform research to develop disruptive musculoskeletal innovations.

NOW, THEREFORE, in consideration of the terms and conditions set forth below, the parties hereby agree as follows:

- A. Center Operations. The Center will be operated by certain faculty, staff and students at University Research Sites.
- B. Initial Support. For the first five years, the Center will be supported jointly by industrial firms, NSF, and other sources. It is possible that University Research Sites may receive support from NSF for an additional ten years.
- C. Membership Eligibility. Any Company, Federal Research and Development organization, or any Government-Owned/Contractor-Operated laboratory may become a member of the Center, consistent with applicable state and Federal laws and statutes.

- D. Term. This Agreement is effective as of the Effective Date and expires after a period of five (5) years thereafter, unless extended by mutual written agreement of the parties or unless terminated using the criterion in Paragraph G below.
- E. Membership Fee. COMPANY agrees to contribute forty thousand U.S. dollars (\$40,000) annually in support of Center ("Annual Membership Fee"). Upon execution of this Agreement and payment of the Annual Membership Fee as set forth in Paragraph F below, COMPANY becomes a "Center Member".
- F. Payment. Payment of the Annual Membership Fee shall be made to [UCSF *or* UT]. Payment should be made within thirty (30) days of invoice and should be sent to:

[ENTER PAYMENT INFORMATION HERE]

Under the terms of the NSF grant, [UCSF *or* UT is authorized to apply a 10% indirect cost rate to expenditure of Annual Membership Fees.

- G. Unrestricted Termination. Company may terminate this Agreement by giving [UCSF *or* UT ninety (90) days prior written notice in accordance with Paragraph P below. In the event of such early termination, Company understands and agrees that no portion of the Annual Membership Fee will be returned.
- H. Industrial Advisory Board. The Center will create an advisory board composed of one representative from each Center Member ("Industrial Advisory Board") which shall adopt appropriate bylaws, and each said representative shall have a single vote. The Industrial Advisory Board will make recommendations on (a) the research projects to be carried out by the Center, (b) the apportionment of resources to these research projects, and (c) changes in the Center bylaws. In the event of a conflict between the bylaws or the decisions of the Industrial Advisory Board and this Agreement, this Agreement shall prevail.
- I. Publication. University Research Sites each retain the right to publish the results of any research generated by their respective investigator(s) in the performance of a research project supported by Center membership fees. University Research Site shall provide to Company a copy of any paper or presentation at least thirty (30) days prior to its submission for publication. Company shall have the opportunity to review any paper or presentation containing results of the research program of Center prior to publication, and shall have the right to request a delay in publication for a period not to exceed ninety (90) days from the date of submission to Company, provided that Company makes a written request and justification for such delay within thirty (30) days from the date the proposed publication is submitted to Company. Authors retain editorial control of the content of all publication submissions.

- J. Patent Ownership. All patentable inventions conceived and first actually reduced to practice in the course of Center funded research (Center Sponsored Inventions), shall belong to the University employing the inventor(s) pursuant to chapter 18 of title 35 of the United States Code, commonly called the Bayh-Dole Act, and subject to "march-in" rights of the Federal Government as set forth in the Act. The University owning such inventions will protect its Center Sponsored Inventions according to its standard practices. University shall promptly and confidentially disclose to Center Members any Center Sponsored Inventions. Center Members shall hold such disclosures on a confidential basis and shall not disclose the information to any third party or use the information without the prior written consent of each University which holds an ownership interest in the Center Sponsored Inventions of interest. Each Center Member shall advise each University holding an ownership interest in the Center Sponsored Invention of interest in writing within sixty (60) days following Center's disclosure whether or not it elects to secure a license as set forth in Paragraph K "Center Sponsored Invention Licenses" below. No response indicates there is no interest from the Center Member to license the Center Sponsored Invention. If, after the 60-day period, no Center Member has expressed interest to secure a license, University Research Site(s) will be free to dispose of rights to such Center Sponsored Invention in accordance with the University Research Site(s)'s policies, with no further obligation to Center Members.
- K. Center Sponsored Invention Licenses. University Research Sites agree that all Center Members in good standing and that are fulfilling membership status pursuant to this Agreement at the time of disclosure are entitled to negotiate a non-exclusive, royalty-free license to use Center Sponsored Inventions, provided that grant of such rights of Center Sponsored Inventions jointly funded by a U.S. Federal/State Government source are consistent with the granting agency. The Center Members will have the right to sublicense to their subsidiaries and affiliates. If more than one Center Member wish to exercise rights to negotiate such royalty-free license, such Center Members agree to share payment of all costs of the patent application(s) and maintenance. If only one Center Member wishes to pursue the Center Sponsored Invention, they may seek an exclusive royalty-bearing commercial license to Center Sponsored Invention in the musculoskeletal field, such license will be negotiated directly with the owning University Research Site(s) and administered according to said University Research Site(s)'s standard practices, and such Center Member agrees to pay for all costs of the patent application(s) and maintenance.
- L. Software Licenses. All Center Members in good standing and that are fulfilling membership status pursuant to this Agreement at the time of disclosure shall be entitled to negotiate a non-exclusive, royalty-free license to use all software developed by Center and funded by the Annual Membership Fees ("CDMI Software"). Each Center Member shall advise each University Research Site(s) holding an ownership

interest in the CDMI Software of interest in writing within sixty (60) days following University Research Site(s)'s disclosure whether or not it elects to secure a license. The Center Members will have the right to enhance and modify CDMI Software, thereby making derivatives, and CDMI Members shall have the right to sell CDMI Software and such derivatives subject to the payment of royalties to the University Research Site(s) owning the CDMI Software under a separate license agreement. Such royalties shall be negotiated, in good faith, based on the value of the CDMI Software. No response indicates there is no interest from the Center Member to license the CDMI Software. If, after the 60-day period, no Center Member has expressed interest to secure a license, University Research Site(s) will be free to dispose of rights to such CDMI Software in accordance with the University Research Site(s)'s policies, with no further obligation to Center Members.

- M. Royalty Distribution by University Research Sites. Any royalties and fees received by a University Research Site granting a license pursuant to this Agreement will be distributed in accordance with said institution's royalty distribution policy.
- N. Notices. Any required notices to be given under this Agreement shall be made to the following representatives of the parties by recognized express courier (all charges prepaid, signature required):
- [ENTER UNIVERSITY CONTACT HERE] [ENTER COMPANY CONTACT HERE]
- O. Confidentiality. During the period of Company's participation in Center under the terms of this Agreement, University Research Site(s) may provide Company certain Prepublication Data and Invention Disclosures (collectively "Confidential Information") related to the research activities of Center researchers. As used herein, Prepublication Data means results of research including but not limited to that presented by University Research Site(s) to Company at Center research review meetings that has not yet been published by the researchers at the time of such presentation. As used herein, Invention Disclosure means written descriptions of inventions or discoveries provided by University Research Site(s) to Company. Confidential Information may be oral, visual, or written, and may also include information provided or delivered by electronic means. If written, it shall be clearly marked "Confidential". If disclosed orally or visually, the material considered Confidential Information shall be identified at the time of disclosure and shall be so designated in writing to Company within thirty (30) days of its original disclosure.

Company will maintain Confidential Information in confidence for three (3) years from the date such Confidential Information is disclosed, even if Company is no longer a member of Center.

With regard to Confidential Information, Company agrees:

- a. to receive Prepublication Data for the sole purpose of providing advice and direction as to Center research programs;
- b. to receive Invention Disclosures for the sole purpose of evaluating its interest in obtaining a commercial license from University Research Site(s);
- c. to safeguard Confidential Information against disclosure to others with the same degree of care as it exercises with its own data of similar nature; and
- d. not to disclose Confidential Information to others (except to its employees, agents, or consultants who are bound to Company by a like obligation of confidentiality) without express written permission of University Research Site(s) except that Company shall not be prevented from using or disclosing any of the Confidential Information which:
 - i. Company can demonstrate by written record was in its possession prior to receipt from University Research Site(s);
 - ii. is now, or becomes in the future, public knowledge other than through acts or omissions of Company;
 - iii. is lawfully obtained by Company from sources independent of University Research Site(s);
 - iv. is required to be disclosed by operation of law, provided that University Research Site(s) has received advanced written notice of the proposed disclosure by the Company;
 - v. is disclosed by University Research Site(s) to a third party without a nondisclosure obligation; or
 - vi. is independently developed by or for Company without the use of Confidential Information as evident in competent written record.

It is further agreed that the furnishing of Confidential Information to Company will not constitute any grant or license to Company under any legal rights now or hereinafter held by University Research Site(s).

- P. Indemnification. Company agrees to and does hereby indemnify, hold harmless and save from liability the University Research Sites (both individually and collectively), including their officers, employees and students, from and against any and all claims, demands and actions arising out of or relating to Company's

commercial use of reports or information provided, or technology licensed, to Company under this Agreement.

- Q. Publicity. The Company and University Research Sites will not use each other's marks or names, or identify any members of their respective project staffs, in any publicity, advertising or news release without prior written approval of an authorized representative of the Company or University Research Sites.
- R. No Warranties. UNIVERSITY RESEARCH SITES DISCLAIM ANY AND ALL WARRANTIES, BOTH EXPRESS AND IMPLIED, WITH RESPECT TO THE SERVICES TO BE PERFORMED HEREUNDER AND ANY DELIVERABLES RESULTING THERE FROM, INCLUDING THEIR CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS THEREIN, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, AND THAT THE USE OF ANY OF THE INVENTIONS, SOFTWARE, OR INTELLECTUAL PROPERTY WILL NOT INFRINGE ANY RIGHTS OF THIRD PARTIES.
- S. IRS Proc 2007-47. Company acknowledges that in the event of a conflict between the bylaws or this Agreement and the requirements of Section 6.03 of IRS Revenue Procedure 2007-47 (and interpretations thereof) dealing with cooperative research agreements, said Section 6.03 shall prevail.
- T. Independent Contractors. University Research Sites and Company are independent contractors, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the parties.
- U. Assignment. Neither party may assign this Agreement without the prior written consent of the other party.
- V. Amendments or Changes. This Agreement constitutes the entire agreement between Company and University Research Sites and supersedes in their entirety any and all oral or written agreements previously existing between the parties with respect to the subject matter. Amendments or changes to this Agreement must be in writing and signed by the parties' authorized representatives.
- W. Electronic Signatures. The parties to this Agreement agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties further waive any right to challenge the admissibility or authenticity of this Agreement in a court of law based solely on the absence of an original signature.

IN WITNESS THEREOF, the parties hereto, intending to be legally bound, have caused this Agreement to be executed by duly authorized representatives as set forth below.

[ENTER COMPANY NAME]

[ENTER UNIVERSITY NAME]

Signature: _____

Signature: _____

Name:

Name:

Title:

Title:

Date

Date:

EXHIBIT B
Memorandum of Understanding
among
The Regent of the University of California,
The University of Toledo
and
The Ohio State University

Memorandum of Understanding
among
The Regents of the University of California,
The University of Toledo
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The Ohio State University

This Memorandum of Understanding (hereinafter "MOU") with the effective date of May 1, 2017, is by and among The Regents of University of California, on behalf of its San Francisco campus ("UCSF"), acting through its Office of Innovation, Technology & Alliances, 3333 California Street, Suite S-11, San Francisco, California 94143; The University of Toledo ("UT"), an instrumentality of the State of Ohio, located at 2801 West Bancroft Street, Toledo, Ohio 43606; and The Ohio State University, Office of Sponsored Programs, 1960 Kenny Road, Columbus, Ohio 43210 ("OSU"); and collectively referred to as "Parties".

WHEREAS, UCSF and UT (collectively referred to as "Institutions") each have received awards from the National Science Foundation for the creation of the Center for Disruptive Musculoskeletal Innovation ("CDMI");

WHEREAS, the activities of CDMI are funded by (i) National Science Foundation ("NSF"), (ii) industry members who have executed the CDMI Industry Membership Agreement ("Center Members"), and (iii) other funds that may be received from time to time;

WHEREAS, Institutions have executed a Memorandum of Understanding, with an effective date of April 30, 2014 (the "MOU Agreement", hereby attached as Exhibit A), which outlines the understanding of Institutions under CDMI; and

WHEREAS, Institutions now desire to have OSU join CDMI as a University Affiliate (as defined under the MOU Agreement).

NOW THEREFORE, the Parties agree as follows:

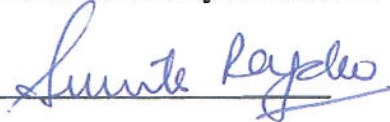
1. Defined terms in this MOU have the meaning set forth in the MOU Agreement, unless specifically changed by the provisions hereof.
2. OSU is joining CDMI as a University Affiliate, and as such OSU shall have the right to recruit Center Members; the intention is that OSU will transition from University Affiliate

to University Research Site after completing the grant submission to the NSF and approval. Industry partners recruited by OSU shall execute the CDMI Industry Membership Agreement (hereby attached as Exhibit B). The Parties to the CDMI Industry Membership Agreements signed before OSU joins CDMI as a University Research Site will be UT, on the one hand, and the industry member recruited by OSU, on the other. The Parties agree that, such CDMI Industry Membership Agreements with industry members recruited by OSU shall be considered as if they were entered into with CDMI. Once OSU joins CDMI as a University Research Site, it will execute Industry Membership Agreements on behalf of CDMI. If OSU does not transition from University Affiliate to a University Research Site, industry members recruited by OSU shall no longer remain as Center Members.

3. In order for OSU to maintain its eligibility as a University Affiliate, during each funding cycle OSU must have in good standing at least one industry member who has signed the CDMI Industry Membership Agreement. Further, at least one such industry member must have been signed on by OSU by September 1st, 2017.
4. OSU shall be entitled to retain membership fees received by CDMI from Center Members recruited by OSU. Any such membership fees received by Institutions on behalf of OSU will be transferred to OSU without the assessment of any indirect costs normally associated with the issuance of a subcontract. OSU shall be entitled to apply a 10% indirect cost rate to expenditure of any such membership fees. In the funding year that OSU applies for full CDMI University Membership, the membership fees received by CDMI that year for CDMI Industry Membership Agreements from OSU shall be credited towards the minimum amount of one hundred and fifty thousand dollars (\$150,000) required for OSU to become a full CDMI University Member no later than by 2018, or the minimum of two hundred thousand dollars (\$200,000) that will be required by NSF of each University Member under Phase II of the National Science Foundation award received by CDMI by October 2018.
5. As a University Affiliate, OSU shall be subject to the obligations under the MOU Agreement described for Institutions under Paragraphs 2 (Cross Funding of Research), 3a and 3b (Industry Member Agreement) and 4 (Ownership and Administration of Intellectual Property).
6. Period of Performance. The period of performance of this Agreement will be concurrent with the CDMI contract with NSF. Either Party may terminate the relationship established by this MOU upon three (3) months' written notice to the other Party.

IN WITNESS WHEREOF, Parties hereto have caused this MOU to be duly executed by their duly authorized officers as of the day and year set forth next to each signature.

The Regents of the University of California

Signature: 

Name: Sunita Rajdev

Title: Associate Director, Technology Management
UCSF Office of Innovation, Technology & Alliances

Date: 6-22-2017

The University of Toledo


Signature: 

Name: Frank J. Calzonetti, Ph.D.

Title: Vice President of Research

Date: 6-28-17

The Ohio State University

Signature: 

Name: Amy B. Dudley

Title: Interim Director, Engineering Sponsored Program Services/
Office of Sponsored Programs

Date: 6/2/17

Approved as to legal form.

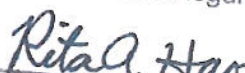
 6-22-2017
Rita A. Hao
Senior Counsel
Office of the General Counsel
Date

EXHIBIT A
Memorandum of Understanding
between
The Regent of the University of California and
University of Toledo

Exhibit A

Memorandum of Understanding
between
The Regents of the University of California
and
University of Toledo

This Memorandum of Understanding (hereinafter "MOU") with the effective date of April 30, 2014, is by and between The Regents of University of California, on behalf of its San Francisco campus ("UCSF"), acting through its Office of Innovation, Technology & Alliances, 3333 California Street, Suite-S11, San Francisco, California 94143 and the University of Toledo ("UT"), an instrumentality of the State of Ohio, located at 2801 West Bancroft Street, Toledo, Ohio 43606, and collectively referred to as "Institutions".

WHEREAS, the Parties each have received awards from the National Science Foundation for the purpose of starting the Center for Disruptive Musculoskeletal Innovation ("CDMI") in its efforts to create concepts, methods, and tools for use in our area of science; to stimulate industrial innovation; and to provide Institutions with strengthened educational and research capabilities in these fields.

WHEREAS, the activities of CDMI are funded by (i) National Science Foundation ("NSF"), (ii) industry members who have executed the CDMI Industry Membership Agreement ("Center Members"), and (iii) other funds that may be received from time to time.

NOW THEREFORE, the Institutions agree as follows:

1. Center Funding.
 - a. During the initial period of this joint center, each Institution will receive its own funds directly from NSF, will be responsible for recruiting its own Center Members, and will retain membership fees collected from its Center Members.
 - b. When NSF decides to make a single payment to one Institution for distribution between Institutions, all membership fees will be deposited into a single account for distribution to Institutions for core research selected by the Industrial Advisory Board (hereinafter referred to as IAB)
2. Cross-Funding of Research. The transfer of funds between Institutions for core projects selected by the IAB will be made without the assessment of the indirect costs normally associated with the

issuance of a subcontract.

3. Industry Membership Agreement.

- a. The Institutions agree that "Center" as referenced in the CDMI Industry Membership Agreement from both UCSF and the CDMI Industry Membership Agreement from UT, collectively is considered as to be CDMI and both CDMI Industry Membership Agreements are hereinafter collectively referred to as "Membership Agreement". Therefore, although each Membership Agreement is signed between an industry member/collaborator and one of the Institutions, under this MOU, the Institutions consider such Membership Agreement as if it were entered into with CDMI, that is, the multisite cooperative research center consisting of UCSF, UT and other university research sites that may later join the Center ("University Affiliates").
- b. UCSF and UT agree to function as a NSF I/UCRC partnership where all Center Members are guaranteed uniform rights and responsibilities to intellectual property developed in the process of Center-funded research regardless of the Center site where Center Member joined.

4. Ownership and Administration of Intellectual Property.

- a. All intellectual property ("IP") invented by inventors solely at one Institution will be managed and title held by that Institution.
- b. Each Institution shall be responsible for the identification and evaluation of its sole IP and for informing Center Members regarding IP as outlined in the Membership Agreement. If Center Members and the inventing Institution agree that patent protection should be sought and if Center Members are interested in securing such protection, the process will follow as outlined in the Membership Agreement. If Center Members are not interested in procuring protection for inventions, the inventing Institutions may determine on their own whether protection will be sought, and that Institution may dispose of the IP as it sees fit.
- c. All IP invented jointly by personnel of Institutions will belong jointly to each Institution and the technology transfer offices at Institutions shall determine who shall administer the IP. After identifying the Institution that will administer the joint IP, Institutions shall negotiate in good faith an inter-institutional intellectual property agreement, under which one of the Institutions will manage the invention on behalf of the joint owners. The managing Institution will be responsible for the timely notification of Center Members that joint intellectual property has arisen, and for protecting, marketing, and licensing that joint intellectual property. Each Institution will be responsible for internal distribution of its share of any license revenue

according to its respective policies. The Institution managing the joint IP shall keep the other Institution advised as to the activities in administering the IP including any progress on commercialization, patent prosecution, or copyright protection. All such information received by either Institution shall be deemed confidential.

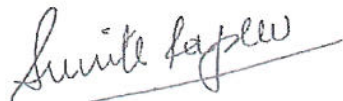
d. Institutions shall jointly review any joint IP, evaluate its commercial potential and inform Center Members regarding the joint IP as outlined in the Membership Agreement. If Center Members and Institutions agree that patent protection should be sought and if Center Members are interested in securing such protection, the process will follow that outlined in the Membership Agreement. If Center Members are not interested in procuring protection for inventions, Institutions will manage the joint IP according to the terms of the inter-institutional agreement.

5. Period of Performance. The period of performance of this Agreement will be concurrent with the CDMI contract with NSF. Either Institution may terminate the relationship established by this MOU upon three (3) months' written notice to the other Institution.

IN WITNESS WHEREOF, Institutions hereto have caused this MOU to be duly executed by their duly authorized officers as of the day and year set forth next to each signature.

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

Signature:



Name: Sunita Rajdev

Title: Associate Director, Technology Management
UCSF Office of Innovation, Technology & Alliances

Date: 4/30/14

UNIVERSITY OF IOWA

Signature:



Name:

William S. Messer, Jr., Ph.D.
Vice President for Research

Title:

Date:

4/22/14

EXHIBIT B
CDMI Industry Membership Agreement

Center for Disruptive Musculoskeletal Innovation
An NSF Industry/University Cooperative Research Center

Industry Membership Agreement
(Non-Negotiable Standard Agreement)

University Reference ID: [ENTER UNIQUE CONTRACT NUMBER HERE]

This Industry Membership Agreement ("Agreement") is effective as of the date of the last signature hereto ("Effective Date") and is entered into by and [The Regents of the University of California, on behalf of its San Francisco campus] ("UCSF") or [The University of Toledo] ("UT") and [ENTER COMPANY NAME HERE], a [ENTER ENTITY DESCRIPTION HERE] organized under the laws of the State of [ENTER STATE OF INCORPORATION HERE] having a principal place of business located at [ENTER COMPANY ADDRESS HERE] ("Company").

WHEREAS, the parties to this Agreement intend to join together in a cooperative effort to support an Industry/University Cooperative Research Center described as the Center for Disruptive Musculoskeletal Innovations (hereinafter "Center") involving the University of California, San Francisco ("UCSF"); University of Toledo ("UT"); and other university research sites awarded by the National Science Foundation that may join this Center (hereinafter collectively referred to "University Research Sites"); and

WHEREAS, the Center is funded by the National Science Foundation ("NSF"); and

WHEREAS, the purpose of Center is to maintain a mechanism whereby a university environment can be used to perform research to develop disruptive musculoskeletal innovations.

NOW, THEREFORE, in consideration of the terms and conditions set forth below, the parties hereby agree as follows:

- A. Center Operations. The Center will be operated by certain faculty, staff and students at University Research Sites.
- B. Initial Support. For the first five years, the Center will be supported jointly by industrial firms, NSF, and other sources. It is possible that University Research Sites may receive support from NSF for an additional ten years.
- C. Membership Eligibility. Any Company, Federal Research and Development organization, or any Government-Owned/Contractor-Operated laboratory may become a member of the Center, consistent with applicable state and Federal laws and statutes.

- D. Term. This Agreement is effective as of the Effective Date and expires after a period of five (5) years thereafter, unless extended by mutual written agreement of the parties or unless terminated using the criterion in Paragraph G below.
- E. Membership Fee. COMPANY agrees to contribute forty thousand U.S. dollars (\$40,000) annually in support of Center ("Annual Membership Fee"). Upon execution of this Agreement and payment of the Annual Membership Fee as set forth in Paragraph F below, COMPANY becomes a "Center Member".
- F. Payment. Payment of the Annual Membership Fee shall be made to [UCSF *or* UT]. Payment should be made within thirty (30) days of invoice and should be sent to:

[ENTER PAYMENT INFORMATION HERE]

Under the terms of the NSF grant, [UCSF *or* UT is authorized to apply a 10% indirect cost rate to expenditure of Annual Membership Fees.

- G. Unrestricted Termination. Company may terminate this Agreement by giving [UCSF *or* UT ninety (90) days prior written notice in accordance with Paragraph P below. In the event of such early termination, Company understands and agrees that no portion of the Annual Membership Fee will be returned.
- H. Industrial Advisory Board. The Center will create an advisory board composed of one representative from each Center Member ("Industrial Advisory Board") which shall adopt appropriate bylaws, and each said representative shall have a single vote. The Industrial Advisory Board will make recommendations on (a) the research projects to be carried out by the Center, (b) the apportionment of resources to these research projects, and (c) changes in the Center bylaws. In the event of a conflict between the bylaws or the decisions of the Industrial Advisory Board and this Agreement, this Agreement shall prevail.
- I. Publication. University Research Sites each retain the right to publish the results of any research generated by their respective investigator(s) in the performance of a research project supported by Center membership fees. University Research Site shall provide to Company a copy of any paper or presentation at least thirty (30) days prior to its submission for publication. Company shall have the opportunity to review any paper or presentation containing results of the research program of Center prior to publication, and shall have the right to request a delay in publication for a period not to exceed ninety (90) days from the date of submission to Company, provided that Company makes a written request and justification for such delay within thirty (30) days from the date the proposed publication is submitted to Company. Authors retain editorial control of the content of all publication submissions.

- J. Patent Ownership. All patentable inventions conceived and first actually reduced to practice in the course of Center funded research (Center Sponsored Inventions), shall belong to the University employing the inventor(s) pursuant to chapter 18 of title 35 of the United States Code, commonly called the Bayh-Dole Act, and subject to "march-in" rights of the Federal Government as set forth in the Act. The University owning such inventions will protect its Center Sponsored Inventions according to its standard practices. University shall promptly and confidentially disclose to Center Members any Center Sponsored Inventions. Center Members shall hold such disclosures on a confidential basis and shall not disclose the information to any third party or use the information without the prior written consent of each University which holds an ownership interest in the Center Sponsored Inventions of interest. Each Center Member shall advise each University holding an ownership interest in the Center Sponsored Invention of interest in writing within sixty (60) days following Center's disclosure whether or not it elects to secure a license as set forth in Paragraph K "Center Sponsored Invention Licenses" below. No response indicates there is no interest from the Center Member to license the Center Sponsored Invention. If, after the 60-day period, no Center Member has expressed interest to secure a license, University Research Site(s) will be free to dispose of rights to such Center Sponsored Invention in accordance with the University Research Site(s)'s policies, with no further obligation to Center Members.
- K. Center Sponsored Invention Licenses. University Research Sites agree that all Center Members in good standing and that are fulfilling membership status pursuant to this Agreement at the time of disclosure are entitled to negotiate a non-exclusive, royalty-free license to use Center Sponsored Inventions, provided that grant of such rights of Center Sponsored Inventions jointly funded by a U.S. Federal/State Government source are consistent with the granting agency. The Center Members will have the right to sublicense to their subsidiaries and affiliates. If more than one Center Member wish to exercise rights to negotiate such royalty-free license, such Center Members agree to share payment of all costs of the patent application(s) and maintenance. If only one Center Member wishes to pursue the Center Sponsored Invention, they may seek an exclusive royalty-bearing commercial license to Center Sponsored Invention in the musculoskeletal field, such license will be negotiated directly with the owning University Research Site(s) and administered according to said University Research Site(s)'s standard practices, and such Center Member agrees to pay for all costs of the patent application(s) and maintenance.
- L. Software Licenses. All Center Members in good standing and that are fulfilling membership status pursuant to this Agreement at the time of disclosure shall be entitled to negotiate a non-exclusive, royalty-free license to use all software developed by Center and funded by the Annual Membership Fees ("CDMI Software"). Each Center Member shall advise each University Research Site(s) holding an ownership

interest in the CDMI Software of interest in writing within sixty (60) days following University Research Site(s)'s disclosure whether or not it elects to secure a license. The Center Members will have the right to enhance and modify CDMI Software, thereby making derivatives, and CDMI Members shall have the right to sell CDMI Software and such derivatives subject to the payment of royalties to the University Research Site(s) owning the CDMI Software under a separate license agreement. Such royalties shall be negotiated, in good faith, based on the value of the CDMI Software. No response indicates there is no interest from the Center Member to license the CDMI Software. If, after the 60-day period, no Center Member has expressed interest to secure a license, University Research Site(s) will be free to dispose of rights to such CDMI Software in accordance with the University Research Site(s)'s policies, with no further obligation to Center Members.

- M. Royalty Distribution by University Research Sites. Any royalties and fees received by a University Research Site granting a license pursuant to this Agreement will be distributed in accordance with said institution's royalty distribution policy.
- N. Notices. Any required notices to be given under this Agreement shall be made to the following representatives of the parties by recognized express courier (all charges prepaid, signature required):
- [ENTER UNIVERSITY CONTACT HERE] [ENTER COMPANY CONTACT HERE]
- O. Confidentiality. During the period of Company's participation in Center under the terms of this Agreement, University Research Site(s) may provide Company certain Prepublication Data and Invention Disclosures (collectively "Confidential Information") related to the research activities of Center researchers. As used herein, Prepublication Data means results of research including but not limited to that presented by University Research Site(s) to Company at Center research review meetings that has not yet been published by the researchers at the time of such presentation. As used herein, Invention Disclosure means written descriptions of inventions or discoveries provided by University Research Site(s) to Company. Confidential Information may be oral, visual, or written, and may also include information provided or delivered by electronic means. If written, it shall be clearly marked "Confidential". If disclosed orally or visually, the material considered Confidential Information shall be identified at the time of disclosure and shall be so designated in writing to Company within thirty (30) days of its original disclosure.

Company will maintain Confidential Information in confidence for three (3) years from the date such Confidential Information is disclosed, even if Company is no longer a member of Center.

With regard to Confidential Information, Company agrees:

- a. to receive Prepublication Data for the sole purpose of providing advice and direction as to Center research programs;
- b. to receive Invention Disclosures for the sole purpose of evaluating its interest in obtaining a commercial license from University Research Site(s);
- c. to safeguard Confidential Information against disclosure to others with the same degree of care as it exercises with its own data of similar nature; and
- d. not to disclose Confidential Information to others (except to its employees, agents, or consultants who are bound to Company by a like obligation of confidentiality) without express written permission of University Research Site(s) except that Company shall not be prevented from using or disclosing any of the Confidential Information which:
 - i. Company can demonstrate by written record was in its possession prior to receipt from University Research Site(s);
 - ii. is now, or becomes in the future, public knowledge other than through acts or omissions of Company;
 - iii. is lawfully obtained by Company from sources independent of University Research Site(s);
 - iv. is required to be disclosed by operation of law, provided that University Research Site(s) has received advanced written notice of the proposed disclosure by the Company;
 - v. is disclosed by University Research Site(s) to a third party without a nondisclosure obligation; or
 - vi. is independently developed by or for Company without the use of Confidential Information as evident in competent written record.

It is further agreed that the furnishing of Confidential Information to Company will not constitute any grant or license to Company under any legal rights now or hereinafter held by University Research Site(s).

- P. Indemnification. Company agrees to and does hereby indemnify, hold harmless and save from liability the University Research Sites (both individually and collectively), including their officers, employees and students, from and against any and all claims, demands and actions arising out of or relating to Company's

commercial use of reports or information provided, or technology licensed, to Company under this Agreement.

- Q. Publicity. The Company and University Research Sites will not use each other's marks or names, or identify any members of their respective project staffs, in any publicity, advertising or news release without prior written approval of an authorized representative of the Company or University Research Sites.
- R. No Warranties. UNIVERSITY RESEARCH SITES DISCLAIM ANY AND ALL WARRANTIES, BOTH EXPRESS AND IMPLIED, WITH RESPECT TO THE SERVICES TO BE PERFORMED HEREUNDER AND ANY DELIVERABLES RESULTING THERE FROM, INCLUDING THEIR CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS THEREIN, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, AND THAT THE USE OF ANY OF THE INVENTIONS, SOFTWARE, OR INTELLECTUAL PROPERTY WILL NOT INFRINGE ANY RIGHTS OF THIRD PARTIES.
- S. IRS Proc 2007-47. Company acknowledges that in the event of a conflict between the bylaws or this Agreement and the requirements of Section 6.03 of IRS Revenue Procedure 2007-47 (and interpretations thereof) dealing with cooperative research agreements, said Section 6.03 shall prevail.
- T. Independent Contractors. University Research Sites and Company are independent contractors, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the parties.
- U. Assignment. Neither party may assign this Agreement without the prior written consent of the other party.
- V. Amendments or Changes. This Agreement constitutes the entire agreement between Company and University Research Sites and supersedes in their entirety any and all oral or written agreements previously existing between the parties with respect to the subject matter. Amendments or changes to this Agreement must be in writing and signed by the parties' authorized representatives.
- W. Electronic Signatures. The parties to this Agreement agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties further waive any right to challenge the admissibility or authenticity of this Agreement in a court of law based solely on the absence of an original signature.

IN WITNESS THEREOF, the parties hereto, intending to be legally bound, have caused this Agreement to be executed by duly authorized representatives as set forth below.

[ENTER COMPANY NAME]

[ENTER UNIVERSITY NAME]

Signature: _____

Signature: _____

Name:

Name:

Title:

Title:

Date

Date:

EXHIBIT C
CDMI Industry Membership Agreement

Center for Disruptive Musculoskeletal Innovation
An NSF Industry/University Cooperative Research Center

Industry Membership Agreement
(Non-Negotiable Standard Agreement)

University Reference ID: [ENTER UNIQUE CONTRACT NUMBER HERE]

This Industry Membership Agreement (“Agreement”) is effective as of the date of the last signature hereto (“Effective Date”) and is entered into by and between **[The Regents of the University of California, on behalf of its San Francisco campus]** (“UCSF”) *or* **[The University of Toledo]** (“UT”) and **[ENTER COMPANY NAME HERE]**, a **[ENTER ENTITY DESCRIPTION HERE]** organized under the laws of the State of **[ENTER STATE OF INCORPORATION HERE]** having a principal place of business located at **[ENTER COMPANY ADDRESS HERE]** (“Company”).

WHEREAS, the parties to this Agreement intend to join together in a cooperative effort to support an Industry/University Cooperative Research Center described as the **Center for Disruptive Musculoskeletal Innovations** (hereinafter “Center”) involving the University of California, San Francisco (“UCSF”); University of Toledo (“UT”); and other university research sites awarded by the National Science Foundation that may join this Center (hereinafter collectively referred to “University Research Sites”); and

WHEREAS, the Center is funded by the National Science Foundation (“NSF”); and

WHEREAS, the purpose of Center is to maintain a mechanism whereby a university environment can be used to perform research to develop disruptive musculoskeletal innovations.

NOW, THEREFORE, in consideration of the terms and conditions set forth below, the parties hereby agree as follows:

- A. Center Operations. The Center will be operated by certain faculty, staff and students at University Research Sites.
- B. Initial Support. For the first five years, the Center will be supported jointly by industrial firms, NSF, and other sources. It is possible that University Research Sites may receive support from NSF for an additional ten years.
- C. Membership Eligibility. Any Company, Federal Research and Development organization, or any Government-Owned/Contractor-Operated laboratory may become a member of the Center, consistent with applicable state and Federal laws and statutes.

- D. Term. This Agreement is effective as of the Effective Date and expires after a period of five (5) years thereafter, unless extended by mutual written agreement of the parties or unless terminated using the criterion in Paragraph G below.
- E. Membership Fee. COMPANY agrees to contribute forty thousand U.S. dollars (\$40,000) annually in support of Center (“Annual Membership Fee”). Upon execution of this Agreement and payment of the Annual Membership Fee as set forth in Paragraph F below, COMPANY becomes a “Center Member”.
- F. Payment. Payment of the Annual Membership Fee shall be made to [UCSF or UT]. Payment should be made within thirty (30) days of invoice and should be sent to:

[ENTER PAYMENT INFORMATION HERE]

Under the terms of the NSF grant, [UCSF or UT] is authorized to apply a 10% indirect cost rate to expenditure of Annual Membership Fees.

- G. Unrestricted Termination. Company may terminate this Agreement by giving [UCSF or UT] ninety (90) days prior written notice in accordance with Paragraph P below. In the event of such early termination, Company understands and agrees that no portion of the Annual Membership Fee will be returned.
- H. Industrial Advisory Board. The Center will create an advisory board composed of one representative from each Center Member (“Industrial Advisory Board”) which shall adopt appropriate bylaws, and each said representative shall have a single vote. The Industrial Advisory Board will make recommendations on (a) the research projects to be carried out by the Center, (b) the apportionment of resources to these research projects, and (c) changes in the Center bylaws. In the event of a conflict between the bylaws or the decisions of the Industrial Advisory Board and this Agreement, this Agreement shall prevail.
- I. Publication. University Research Sites each retain the right to publish the results of any research generated by their respective investigator(s) in the performance of a research project supported by Center membership fees. University Research Site shall provide to Company a copy of any paper or presentation at least thirty (30) days prior to its submission for publication. Company shall have the opportunity to

review any paper or presentation containing results of the research program of Center prior to publication, and shall have the right to request a delay in publication for a period not to exceed ninety (90) days from the date of submission to Company, provided that Company makes a written request and justification for such delay within thirty (30) days from the date the proposed publication is submitted to Company. Authors retain editorial control of the content of all publication submissions.

- J. Patent Ownership. All patentable inventions conceived and first actually reduced to practice in the course of Center funded research (Center Sponsored Inventions), shall belong to the University employing the inventor(s) pursuant to chapter 18 of title 35 of the United States Code, commonly called the Bayh-Dole Act, and subject to "march-in" rights of the Federal Government as set forth in the Act. The University owning such inventions will protect its Center Sponsored Inventions according to its standard practices. University shall promptly and confidentially disclose to Center Members any Center Sponsored Inventions. Center Members shall hold such disclosures on a confidential basis and shall not disclose the information to any third party or use the information without the prior written consent of each University which holds an ownership interest in the Center Sponsored Inventions of interest. Each Center Member shall advise each University holding an ownership interest in the Center Sponsored Invention of interest in writing within sixty (60) days following Center's disclosure whether or not it elects to secure a license as set forth in Paragraph M "Center Sponsored Invention Licenses" below. No response indicates there is no interest from the Center Member to license the Center Sponsored Invention. If, after the 60-day period, no Center Member has expressed interest to secure a license, University Research Site(s) will be free to dispose of rights to such Center Sponsored Invention in accordance with the University Research Site(s)'s policies, with no further obligation to Center Members.
- K. Center Sponsored Invention Licenses. University Research Sites agree that all Center Members in good standing and that are fulfilling membership status pursuant to this Agreement at the time of disclosure are entitled to negotiate a non-exclusive, royalty-free license to use Center Sponsored Inventions, provided that grant of such rights of Center Sponsored Inventions jointly funded by a U.S. Federal/State Government source are consistent with the granting agency. The Center Members will have the right to sublicense to their subsidiaries and affiliates. If more than one Center Member wish to exercise rights to negotiate such royalty-free license, such Center Members agree to share payment of all costs of the patent application(s) and maintenance. If only one Center Member wishes to pursue the Invention, they may seek an exclusive royalty-bearing commercial license to Center Sponsored Invention in the musculoskeletal field, such license will be negotiated directly with the owning University Research Site(s) and administered according to said University Research Site(s)'s standard practices, and such Center

Member agrees to pay for all costs of the patent application(s) and maintenance.

- L. Software Licenses. All Center Members in good standing and that are fulfilling membership status pursuant to this Agreement at the time of disclosure shall be entitled to negotiate a non-exclusive, royalty-free license to use all software developed by Center and funded by the Annual Membership Fees (“CDMI Software”). Each Center Member shall advise each University Research Site(s) holding an ownership interest in the CDMI Software of interest in writing within sixty (60) days following University Research Site(s)'s disclosure whether or not it elects to secure a license. The Center Members will have the right to enhance and modify CDMI Software, thereby making derivatives, and CDMI Members shall have the right to sell CDMI Software and such derivatives subject to the payment of royalties to the University Research Site(s) owning the CDMI Software under a separate license agreement. Such royalties shall be negotiated, in good faith, based on the value of the CDMI Software. No response indicates there is no interest from the Center Member to license the CDMI Software. If, after the 60-day period, no Center Member has expressed interest to secure a license, University Research Site(s) will be free to dispose of rights to such CDMI Software in accordance with the University Research Site(s)'s policies, with no further obligation to Center Members.
- M. Royalty Distribution by University Research Sites. Any royalties and fees received by a University Research Site granting a license pursuant to this Agreement will be distributed in accordance with said institution's royalty distribution policy.
- N. Notices. Any required notices to be given under this Agreement shall be made to the following representatives of the parties by recognized express courier (all charges prepaid, signature required):

[ENTER UNIVERSITY CONTACT HERE]

[ENTER COMPANY CONTACT HERE]

- O. Confidentiality. During the period of Company's participation in Center under the terms of this Agreement, University Research Site(s) may provide Company certain Prepublication Data and Invention Disclosures (collectively “Confidential Information”) related to the research activities of Center researchers. As used herein, Prepublication Data means results of research including but not limited to that presented by University Research Site(s) to Company at Center research review meetings that has not yet been published by the researchers at the time of such presentation. As used herein, Invention Disclosure

means written descriptions of inventions or discoveries provided by University Research Site(s) to Company. Confidential Information may be oral, visual, or written, and may also include information provided or delivered by electronic means. If written, it shall be clearly marked "Confidential". If disclosed orally or visually, the material considered Confidential Information shall be identified at the time of disclosure and shall be so designated in writing to Company within thirty (30) days of its original disclosure.

Company will maintain Confidential Information in confidence for three (3) years from the date such Confidential Information is disclosed, even if Company is no longer a member of Center.

With regard to Confidential Information, Company agrees:

- a. to receive Prepublication Data for the sole purpose of providing advice and direction as to Center research programs;
- b. to receive Invention Disclosures for the sole purpose of evaluating its interest in obtaining a commercial license from University Research Site(s);
- c. to safeguard Confidential Information against disclosure to others with the same degree of care as it exercises with its own data of similar nature; and
- d. not to disclose Confidential Information to others (except to its employees, agents, or consultants who are bound to Company by a like obligation of confidentiality) without express written permission of University Research Site(s) except that Company shall not be prevented from using or disclosing any of the Confidential Information which:
 - i. Company can demonstrate by written record was in its possession prior to receipt from University Research Site(s);
 - ii. is now, or becomes in the future, public knowledge other than through acts or omissions of Company;
 - iii. is lawfully obtained by Company from sources independent of University Research Site(s);
 - iv. is required to be disclosed by operation of law, provided that University Research Site(s) has received advanced written notice of the proposed disclosure by the Company;
 - v. is disclosed by University Research Site(s) to a third party without a nondisclosure obligation; or
 - vi. is independently developed by or for Company without the use of Confidential

Information as evident in competent written record.

It is further agreed that the furnishing of Confidential Information to Company will not constitute any grant or license to Company under any legal rights now or hereinafter held by University Research Site(s).

- P. Indemnification. Company agrees to and does hereby indemnify, hold harmless and save from liability the University Research Sites (both individually and collectively), including their officers, employees and students, from and against any and all claims, demands and actions arising out of or relating to Company's commercial use of reports or information provided, or technology licensed, to Company under this Agreement.
- Q. Publicity. The Company and University Research Sites will not use each other's marks or names, or identify any members of their respective project staffs, in any publicity, advertising or news release without prior written approval of an authorized representative of the Company or University Research Sites.
- R. No Warranties. **UNIVERSITY RESEARCH SITES DISCLAIM ANY AND ALL WARRANTIES, BOTH EXPRESS AND IMPLIED, WITH RESPECT TO THE SERVICES TO BE PERFORMED HEREUNDER AND ANY DELIVERABLES RESULTING THERE FROM, INCLUDING THEIR CONDITION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS THEREIN, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, AND THAT THE USE OF ANY OF THE INVENTIONS, SOFTWARE, OR INTELLECTUAL PROPERTY WILL NOT INFRINGE ANY RIGHTS OF THIRD PARTIES.**
- S. IRS Proc 2007-47. Company acknowledges that in the event of a conflict between the bylaws or this Agreement and the requirements of Section 6.03 of IRS Revenue Procedure 2007-47 (and interpretations thereof) dealing with cooperative research agreements, said Section 6.03 shall prevail.
- T. Independent Contractors. University Research Sites and Company are independent contractors, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the parties.
- U. Assignment. Neither party may assign this Agreement without the prior written consent of the other party.
- V. Amendments or Changes. This Agreement constitutes the entire agreement between Company and University Research Sites and supersedes in their entirety any and all oral or written agreements

previously existing between the parties with respect to the subject matter. Amendments or changes to this Agreement must be in writing and signed by the parties' authorized representatives.

W. Electronic Signatures. The parties to this Agreement agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties further waive any right to challenge the admissibility or authenticity of this Agreement in a court of law based solely on the absence of an original signature.

IN WITNESS THEREOF, the parties hereto, intending to be legally bound, have caused this Agreement to be executed by duly authorized representatives as set forth below.

[ENTER COMPANY NAME]

Signature:

Name:

Title:

Date:

[ENTER UNIVERSITY NAME]

Signature:

Name:

Title:

Date